उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.No.322/04 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

SB: HON'BLE SHRI DHIRENDRA MISHRA, J.

APPELLANT Ramkeshwar @ Baura Pando, S/o Sonu Pando, age 27 years, R/o. village Kundpan, P.S. Sanawal, Distt. Surguja (CG)

VERSUS

RESPONDENT State of Chhattisgarh, through Police Station Sanawal, Distt. Surguja (CG)

19-11-2007

Shri A.K. Prasad, Advocate, for the appellant.

Smt. Madhunisha Singh, Panel Lawyer for the State.

2. This criminal appeal is directed against the judgment of conviction and order of sentence dated 27-2-2004 passed in S.T. No. 65/2003 whereby learned Additional Sessions Judge (FTC), Ramanujganj, Distt. Surguja has convicted the appellant under Section 323 and 376 of I.P.C. and sentenced him to undergo R.I. for 1 year with fine of Rs. 1000/- and to undergo R.I. for 10 years with fine of Rs. 5000/- respectively and in default of payment of fine to further undergo R.I. for 3 months and 1 year. Both the sentences have been directed to run concurrently.

3. Case of the prosecution, in brief, is that on 22-9-2002 the prosecutrix, a girl of about 13 to 14 years had gone to Forest for grazing her cattle along with Kalawati (P.W. 6) and Surajmaniya (P.W. 4). The appellant had also gone to graze his buffaloes. The appellant started chasing the prosecutrix and the two girls, as a result of which

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they started running. However after getting tired, the prosecutrix sat on the ground when the appellant caught her. When the prosecutrix abused her, he assaulted the prosecutrix on her back with a club and also assaulted on her cheek by fist and thereafter dragged her upto a ditch and committed rape with her. The prosecutrix narrated about the incident to her mother P.W. 21 Devman, father P.W. 5 Ramsundar and other villagers. Report was lodged on 23rd September, 2002 at about 11.30 a.m. During investigation, the prosecutrix was sent for medical examination to Primary Health Centre, Sanawal, where Dr. Manju Ekka examined her and gave her report of Ex. P-15. She was also sent for ossification test where Dr. M.K. Jain (P.W. 14) examined her and gave his report of Ex. P-9. After completing investigation, charge sheet was filed.

4. During trial, prosecution examined 21 witnesses in all and thereafter statement of accused was recorded in which he denied the evidence appearing against him in prosecution case and pleaded innocence and false implication. He also examined Heeralal (D.W. 1) and Jagmohan (D.W. 2) in his defence.

5. The trial Court after hearing the learned counsel for the parties has convicted and sentenced the appellant as mentioned in para 1 of the judgment.

6. Learned counsel for the appellant submits that the prosecution has not been able to prove the age of the prosecutrix that she was

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minor and the report of Dr. M.K. Jain of Ex. P-9 on the basis of ossification test in which it is opined that her age was 13-14 year, was in variation of 3 years in either side. He further argued that the mother of the prosecutrix Devnan (P.W. 21) to whom the prosecutrix narrated the incident has categorically stated that the prosecutrix told her that the appellant assaulted her by club. She has been declared -hostile by the prosecution and in the cross-examination also, she has stuck to her examination-in-chief that the prosecutrix did not disclose about commission of rape. He further argued that father of the prosecutrix had demanded money from the appellant and when he did not oblige, the report was lodged. Para 4 of the statement of P.W. 9 Bantu was also referred.

7. On the other hand, learned counsel for the State has supported the impugned judgment.

8. I have heard learned counsel for the parties. I have perused the record as also the impugned judgment.

9. Conviction of the appellant is based on statement of the prosecutrix (P.W. 10). Witnesses P.W. 6 Kalawati and P.W. 4 Surajmaniya were also present with the prosecutrix on the date of incident. P.W. 10 the prosecutrix has stated that on the date of incident she had gone to forest to graze her cattle. Lallan had also gone there to graze his buffaloes whereas Surajmaniya and Kalawati had gone there to fetch fire wood. When she was returning after

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grazing, she was playing with others who had gone for grazing, with mud. At that time, accused came there and threw mud at her, whereupon she also threw mud at him, thereafter accused started chasing her. When she got tired from running, the accused came behind her and started dragging her and took to ditch at a distance and thereafter threw her on the ground and raped her after undressing her and himself. When she tried to shout he gagged her by inserting lungi in her mouth. In the meanwhile, another person named Lallan came near the place of incident and on seeing Lallan, the accused fled from there. She narrated about the incident to her parents and thereafter Panchayat was convened in her house and on the advice of Panchas report of Ex. P-1 was lodged. In the cross-examination she has admitted that the accused is frequent visitor of her home and omission regarding fighting with mud, Surajmaniya and Kalawati went to fetch fire wood, has been pointed out in her cross-examination in para 6, however, she has admitted that there is some dispute between the appellant and her father in relation to some land. She has denied the suggestion of the defence that she was in love with the appellant and she has admitted that the report was lodged only after a meeting was convened in the village and if Panchas had not asked her to lodge the report, she would not have reported the matter to the police. Counsel for the appellant has stressed that the prosecutrix has stated that the accused is innocent and he has not committed any offence in paragraph 10 of her deposition. However, after perusing the statement of the prosecutrix,

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	I am of the opinion that the defence has not been able to show any ground that the prosecutrix is an unreliable or untrustworthy witness and simply because she has stated that the accused is innocent and he did not commit any offence would not absolve the appellant when the prosecutrix has alleged against him. 10. P.W. 4 Surajmaniya is 10 years old witness. Her statement has been recorded without administering oath after preliminary examination. Initially, she has expressed ignorance about incident however when some leading questions were put to her, she admitted that she had gone to collect fire wood with Kalawati and at that time, prosecutrix and Lallan were grazing their cattle and she saw the accused chasing Kalawati and she run from there and after some time when they met, the prosecutrix was weeping and on being asked, she narrated that she was beaten by the accused and thereafter she was raped in a ditch. In further cross-examination by the defence, this witness has again stated that the police did not record her statement and she does not know as to what incident has happened in the forest and the prosecutrix did not tell anything to her about the incident. 11. P.W. 6 Kalawati is also 8 years old child witness. She has corroborated the statement of the prosecutrix in her examination-in-chief to the extent that the accused chased the prosecutrix after chasing Surajmaniya and thereafter they saw that the prosecutrix	

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was weeping however, the prosecutrix did not state anything more. When leading questions were put to her, she admitted that the prosecutrix told them that the appellant has committed rape with her however, in cross-examination by the defence, she has stated that she has deposed as per tutoring of father and she has not seen anything herself.

12. P.W. 5 Ramsundar, father of the prosecutrix has stated that his daughter had narrated about the incident after return from forest. He has denied the defence of the accused that he had demanded Rs. 20,000/- on the threat of lodging report.

13. It is true that mother of the prosecutrix Devman has not supported the case of the prosecution and she has only stated that the accused had beat her daughter with a club. Medico Legal Examination report of the prosecutrix has been proved by Dr. Sunita Sharma (P.W. 15), however she has not conducted examination but she has proved the report prepared by Dr. Manju Ekka, who has not been examined during trial. In the report of Ex. P-15 after examination, the doctor found that redness , swelling and erosion (wound due to friction) was present around vagina of the prosecutrix. Hymen of the prosecutrix was torn and vagina had admitted two fingers with pain. There was no injury on her cheek, thighs and breast however abrasions were present on her back and a positive opinion regarding commission of rape has been given. In cross-

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examination, she has denied that the injuries could be caused because of itching and this witness has stated that by itching, the blood secretion is not possible from vagina.

14. Defence witness Heeralal Singh (D.W. 1) who is Sarpanch of the village has stated that there was a quarrel between the father of the prosecutrix and the accused and he had imposed penalty of Rs. 5000/- on Ramsundar on the complaint of the accused and because of the above animosity, he has falsely implicated the accused. This witness has also admitted that he cannot say for certainty that it is a case of false implication as he had not enquired from the prosecutrix. Jagmohan (D.W. 2) who is brother of the accused has also stated that the father of the prosecutrix has falsely implicated the appellant due to land related dispute. In the cross-examination he has admitted that on the date of incident, the accused had gone to forest and even the prosecutrix and other two girls had also gone to forest and he does not know what transpired in the forest thereafter and the accused has only admitted that he had assaulted the prosecutrix and he did not make any enquiry from the prosecutrix.

15. Thus from the version of the above two defence witnesses, it is clear that they did not in any manner support the defence. After going through the statement of the prosecutrix and further considering the statement of the child witnesses and also the statement of her father, the version of the prosecutrix inspire

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confidence of this Court. Her version is duly corroborated from the medical examination report of the prosecutrix of Ex. P-15 and in these circumstances, the conviction recorded by the trial Court by the impugned judgment under Sections 323 and 376 of I.P.C. and sentences imposed under those sections are strictly on the basis of the evidence available on record and the same cannot be faulted.

16. In the result, the appeal being devoid of merit is liable to be dismissed and it is accordingly dismissed.

Sd/-
DHIRENDRA MISHRA
Judge

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